



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 06 2011

Marc E. Elias, Esq.  
Perkins Coie  
700 Thirteenth Street, NW  
Washington, DC 20005

RE: MUR.6394  
Rochelle M. Pingree  
Pingree for Congress and  
Anne Rand, in her official capacity  
as treasurer  
Magic Carpet Enterprises LLC  
S. Donald Sussman

Dear Mr. Elias:

On October 15, 2010, the Federal Election Commission notified Rochelle M. Pingree, Pingree for Congress and Anne Rand, in her official capacity as treasurer, Magic Carpet Enterprises LLC, and S. Donald Sussman of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to them at that time.

Upon further review of the allegations contained in the complaint, and information you supplied, the Commission, on June 28, 2011, found that there is reason to believe that Rochelle M. Pingree violated 2 U.S.C. § 439a(c)(2) and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b), and that Pingree for Congress and Anne Rand, in her official capacity as treasurer, violated 2 U.S.C. § 439a(c)(2) and 11 C.F.R. § 113.5(b). The Commission also found that there is reason to believe that Rochelle M. Pingree, Pingree for Congress and Anne Rand, in her official capacity as treasurer, violated 2 U.S.C. § 441b(a) or, alternatively, 2 U.S.C. § 441a(f). The Commission further found that there is reason to believe that Magic Carpet Enterprises LLC violated 2 U.S.C. § 441b(a), and that S. Donald Sussman, its owner and principal officer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(e). Alternatively, the Commission found that there is reason to believe that S. Donald Sussman violated 2 U.S.C. § 441a(a)(1)(A). The Factual and Legal Analyses, which formed a basis for the Commission's findings, are attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be

submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.


If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,

  
Cynthia L. Bauerly  
Chair

**Enclosures**

Factual and Legal Analysis (Rochelle M. Pingree and Pingree for Congress)  
Factual and Legal Analysis (Magic Carpet Enterprises and S. Donald Sussman)

1-160747-4-1608

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENTS:** Rochelle M. Pingree **MUR: 6394**  
5 Pingree for Congress and  
6 Anne Rand, in her official capacity  
7 as treasurer  
8  
9

10 **I. INTRODUCTION**

11 This matter concerns allegations that Representative Rochelle M. Pingree traveled on a  
12 private jet to and from a September 13, 2010, re-election fundraiser in violation of the ban on  
13 non-commercial campaign-related air travel by House candidates. Respondents acknowledge  
14 that Representative Pingree traveled to the fundraiser on a private jet, but assert that the travel on  
15 the jet owned by her fiancé, S. Donald Sussman, through Magic Carpet Enterprises LLC, was  
16 primarily personal and did not constitute the type of campaign expenditure that would violate the  
17 Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA").

18 **II. FACTS**

19 Representative Pingree was a candidate for re-election to Maine's First Congressional  
20 District in 2010. Pingree for Congress is her authorized committee. Representative Pingree has  
21 had a relationship with S. Donald Sussman since approximately 2007. In late 2010, not long  
22 after news of the flights on the private jet became public, Representative Pingree announced that  
23 she and Mr. Sussman had been engaged to be married since after the 2008 election. See  
24 <http://www.onlinesentinel.com/news/allegations-politicallydriven-pingree-says> 2010-09-  
25 [26.html](#), (last visited April 8, 2011). Mr. Sussman gave the maximum \$4,800 (\$2,400 x 2)  
26 election cycle contribution to Representative Pingree's re-election campaign on January 26,

1 2009. Mr. Sussman, the founder and chairman of Paloma Partners, an investment firm in  
2 Greenwich, Connecticut, wholly owns Magic Carpet Enterprises LLC ("Magic Carpet"), which  
3 owns the 19-seat 2007 Dassault Falcon 2000EX private jet on which Representative Pingree flew  
4 on the trips at issue in this matter. *See* Complaint at 2, Joint Response at 1.

5 Pingree for Congress scheduled a re-election fundraiser for Representative Pingree at a  
6 private residence in New York City on September 13, 2010, from 6:30 p.m. to 8:00 p.m. *See*  
7 <http://action.chelliepingree.com/page/event/detail/houseparty/w58>, last visited February 11,  
8 2011). As of August 24, 2010, over 20 individuals, including Representative Pingree's son, had  
9 expressed an intention to attend the fundraiser. *Id.*

10 On the morning of the fundraiser, Monday, September 13, 2010, Representative Pingree  
11 traveled with Mr. Sussman from Portland, Maine, to White Plains, New York, on the Magic  
12 Carpet jet. *See* Joint Response at 1. After arriving in White Plains at 1:20 p.m., Representative  
13 Pingree and Mr. Sussman drove to New York City, about an hour away by car. Joint Response at  
14 2. Representative Pingree later attended the fundraiser in Manhattan from approximately 6:30  
15 p.m. to 8:00 p.m. After the fundraiser ended, Representative Pingree and Mr. Sussman drove  
16 back to White Plains and departed on the private jet to Washington, D.C., at 9:22 p.m. *Id.* Based  
17 on publicly available information, the charter rate for a comparably-sized corporate jet for the  
18 two flights appears to be at least \$10,000 per flight, or at least \$20,000 for both flights. *See*  
19 <http://www.avchart.com/users/quotes/default.asp>.

20 Respondents claim that "it is not uncommon" for Representative Pingree and  
21 Mr. Sussman (who often has meetings in New York) to fly to New York together for an  
22 afternoon or evening, so that they can have extra time together before Representative Pingree  
23 returns to Washington, D.C. *See* Joint Response at 1. Respondents claim that Mr. Sussman had

1 a personal meeting in New York on September 13, 2010, and that he wanted Representative  
2 Pingree to attend with him. *Id.* After this meeting (of unspecified duration), Representative  
3 Pingree visited with her son and grandson, and later went to the fundraiser between 6:30 p.m. and  
4 8:00 p.m. Respondents argue that the primary purpose of the trip was personal and Mr. Sussman  
5 would have invited Representative Pingree to accompany him irrespective of her candidacy. On  
6 this basis, Respondents assert that the cost of the flights should not be considered a campaign  
7 expenditure, and thus not subject to the ban on using non-commercial aircraft for House  
8 candidates engaged in campaign travel.<sup>1</sup> *Id.* at 2.

9 Respondents point out that the House Committee on Standards of Official Conduct  
10 ("House Ethics Committee") has opined that Representative Pingree may accept unlimited gifts  
11 of transportation, including travel by private aircraft, where the donor is the fiancé of the  
12 recipient. Joint Response at 6. The House Ethics Committee's approval of Representative  
13 Pingree's accepting trips as gifts from Mr. Sussman, however, was based on the fact that the  
14 relevant House gift ban statute, Ethics in Government Act of 1978 (5 U.S.C. app 4 § 109(16)),  
15 specifically includes a fiancé as a relative to whom an exception applies. *See*  
16 <http://ethics.house.gov>, (last visited February 3, 2011). Further, the House Ethics Committee's  
17 opinion does not indicate any awareness that Representative Pingree would conduct campaign  
18 activities during trips.<sup>2</sup> *See* <http://ethics.house.gov>, (last visited February 3, 2011).

<sup>1</sup> Although the complaint alluded to multiple additional flights Representative Pingree has taken on the Magic Carpet jet, there is no information at this time indicating whether or not she conducted campaign activities on those trips.

<sup>2</sup> The House Ethics Committee generally recommends that Representatives also seek guidance from the Commission regarding non-commercial travel.

1 Respondents do not argue that the House Ethics Committee approval would sanction  
2 Representative Pingree's travel if it constituted a campaign expenditure under the Act. Rather, as  
3 discussed below, Respondents argue that by applying a 2002 Commission Advisory Opinion  
4 regarding mixed-purpose travel on commercial flights, which pre-dates the current ban on non-  
5 commercial air travel by House candidates, it is possible to conclude that Representative Pingree  
6 traveled to New York City and attended her campaign fundraiser without ever making a  
7 prohibited campaign expenditure for the non-commercial flight. *See* AO 2002-5 (Hutchinson).

8 **III. ANALYSIS**

9 The Honest Leadership and Open Government Act of 2007 ("HLOGA"), which became  
10 effective on September 14, 2007, amended FECA to prohibit House candidates from making any  
11 expenditure for non-commercial aircraft travel. *See* 2 U.S.C. § 439a(c)(2). The Commission  
12 promulgated implementing regulations that became effective on January 6, 2010. *See*  
13 Explanation and Justification, 74 Fed. Reg. 63951 (December 7, 2009). The regulations provide  
14 that House candidates are prohibited from traveling on non-commercial aircraft on behalf of their  
15 own campaigns, and also from accepting an in-kind contribution in the form of non-commercial  
16 air travel. *See* 11 C.F.R. §§ 100.93(c)(2) and 113.5(b). The HLOGA prohibition on non-  
17 commercial air travel applies to any House candidate who is a "campaign traveler," which  
18 includes, "any candidate traveling in connection with an election for Federal office or any  
19 individual traveling in connection with an election for Federal office on behalf of a candidate or  
20 political committee." 11 C.F.R. § 100.93(a)(3)(i)(A).

1 The HLOGA prohibition, however, does not apply to non-commercial aircraft owned or  
2 leased by the candidate or an immediate family member.<sup>3</sup> 2 U.S.C. § 439a(3)(A); 11 C.F.R.  
3 § 113.5(c)(1). For the purposes of this exception, however, an immediate family member is  
4 limited to a father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-  
5 in-law. 2 U.S.C. § 439a(3)(B); 11 C.F.R. §§ 100.93(g)(4) and 113.5(c)(3). A “fiancé” is not  
6 included on the statutory list of immediate family members allowed to provide non-commercial  
7 flights to a House candidate. *Id.* Although Respondents note that the House Ethics Committee  
8 Opinion allows Representative Pingree to accept unlimited personal gifts of transportation from  
9 her fiancé, they do not argue that the Pingree-Sussman relationship qualifies for the immediate  
10 family member exception to the HLOGA ban on non-commercial air travel.

11 The Act and Commission regulations prohibit corporations from making any  
12 contribution, and corporate officers from consenting to any corporate contribution, in connection  
13 with a federal election, and prohibit candidates and committees from accepting such  
14 contributions. 2 U.S.C. § 441b and 11 C.F.R. § 114.2(e). “Contribution” includes any gift,  
15 subscription, loan, advance, or deposit of money or anything of value made by any person for the  
16 purpose of influencing any election for federal office. 2 U.S.C. § 431(8).

17 The Act also prohibits any person from making contributions to any candidate or the  
18 candidate’s authorized committee with respect to a federal election which, in the aggregate,  
19 exceed \$2,400 in the 2010 election cycle. 2 U.S.C. § 441a(a)(1)(A). Finally, the Act provides  
20 that no candidate, officer, or employee of a political committee shall knowingly accept any  
21 contribution that exceeds the contribution limits. 2 U.S.C. § 441a(f).

<sup>3</sup> The prohibition also does not apply to travel on federal or state government-operated aircraft. See 2 U.S.C. § 439a(2)(B); 11 C.F.R. §§ 100.93(e) and 113.5(b)(2).

1                   **1. Representative Pingree violated the Act by flying on a**  
2                   **non-commercial aircraft in connection with a federal election**  
3

4           Representative Pingree attended a fundraiser for her re-election campaign in New York  
5 City on September 13, 2010. Because this fundraiser was "in connection with an election for  
6 federal office" and on behalf of her candidacy, Representative Pingree was a covered "campaign  
7 traveler" while traveling to and from New York City. *See* 11 C.F.R. § 100.93(a)(3)(i)(A). Given  
8 that Representative Pingree flew on a non-commercial aircraft to attend her re-election  
9 fundraiser, she violated 11 C.F.R. § 100.93(c)(2). Accordingly, there is reason to believe that  
10 Rochelle M. Pingree violated 11 C.F.R. § 100.93(c)(2) by traveling on a non-commercial aircraft  
11 in connection with her campaign for re-election to the House of Representatives, and that  
12 Representative Pingree and her Committee violated 2 U.S.C. § 439a(c)(2) and 11 C.F.R.  
13 § 113.5(b) by accepting prohibited in-kind contributions in the form of non-commercial air  
14 travel.

15           In response to the complaint's allegation that Representative Pingree was a "campaign  
16 traveler," Respondents argue that there was no "campaign expenditure" for the trip, because  
17 1) Representative Pingree would have been offered the trip on the Magic Carpet jet for personal  
18 business without regard to her status as a candidate, and 2) there was no additional cost beyond  
19 what would have been expended if her trip had been limited to personal business. *See* Joint  
20 Response at 2, 5. Respondents point to Advisory Opinion 2002-5 (Hutchinson) to suggest that,  
21 because that candidate was under no obligation to reimburse her employer for the cost of a  
22 permissible commercial flight on a mixed-purpose trip, the Commission should conclude that  
23 there was no covered "campaign expenditure" for the non-commercial flights Representative  
24 Pingree took to and from her fundraiser. *See* Joint Response at 4-6.



1 In AO 2002-5, a mayor, who also was a candidate for federal office, traveled to  
2 Washington, D.C., for two days of official city business, four days of personal activities, and two  
3 additional days engaged in federal campaign activity. The Commission analyzed the apparent  
4 conflict between its since-modified travel allocation regulations at 11 C.F.R. § 106.3(b)(3)  
5 (which treated all expenses of a stop in mixed-purpose travel as campaign-related where a  
6 candidate conducted any non-incidental campaign-related activity), and the personal use  
7 regulations at 11 C.F.R. § 113.1(g) (which treated only the incremental expenses of the trip as  
8 campaign-related activities, and thus expenditures under the Act). While the Commission  
9 concluded that the candidate's federal campaign activity in Washington, D.C., was too significant  
10 to be deemed incidental, it gave priority to Section 113.1(g) in finding that the mayor's federal  
11 committee was only required to pay for the additional costs related to the campaign activity.  
12 Because the mayor's commercial airfare for the trip to Washington, D.C., which had been pre-  
13 scheduled for official city business, would have been incurred regardless of whether there had  
14 been campaign activity, the candidate's campaign was not required to reimburse the city for the  
15 cost of the commercial airfare. *Id.* Respondents argue that the Commission's opinion in AO  
16 2002-5 means that the cost of a candidate's airfare on a mixed-purpose trip that was to be paid by  
17 a third party irrespective of the traveler's federal candidacy does not constitute a campaign  
18 expenditure, and they argue that the same conclusion should apply to the cost of Representative  
19 Pingree's non-commercial air travel. Joint Response at 5-6.

20 The Hutchinson advisory opinion, which dealt with allocation of permissible travel costs  
21 prior to the passage of HLOGA, is inapplicable to this situation. HLOGA prohibits the use of  
22 non-commercial flights by House candidates engaged in campaign travel. Both HLOGA and the  
23 Commission regulations create a bright-line test for any travel in connection with the candidate's

1 election. Because Representative Pingree attended a campaign fundraising event, there is no  
2 dispute that her trip to New York was in connection with an election. The HLOGA restrictions  
3 on a "campaign traveler" are not altered or negated by a House candidate including some non-  
4 campaign activity on a trip involving campaign activity. Respondents' arguments about the  
5 "primary purpose" of the trip might be relevant to determining whether Mr. Sussman could pay  
6 for Representative Pingree's commercial airfare on a trip with him that would have occurred  
7 irrespective of her candidacy, but are irrelevant to determining whether Representative Pingree  
8 could use prohibited non-commercial flights in connection with her re-election campaign.  
9 Because Representative Pingree went to a campaign fundraiser while on the trip to New York  
10 City, she is a covered campaign traveler who may not travel on a non-commercial aircraft.<sup>4</sup>

11 As noted above, while the HLOGA ban contains a limited exception for flights on aircraft  
12 leased or owned by immediate family members, Mr. Sussman, as a fiancé, does not qualify as an  
13 immediate family member under HLOGA or the Commission's regulations. Accordingly,  
14 Representative Pingree cannot accept these non-commercial flights. See Explanation and  
15 Justification, 74 Fed. Reg. 63951, 63954 (December 7, 2009).

16 While Mr. Sussman, as Representative Pingree's fiancé, could pay for non-campaign  
17 flights, Representative Pingree attended a campaign fundraiser. Thus, the prohibition against a  
18 House candidate accepting non-commercial air travel as an in-kind contribution precludes such  
19 payment. The Commission acknowledges that there are circumstances where third party  
20 payments may be permissible under HLOGA. See 11 C.F.R. § 100.93(c)(2), Explanation and  
21 Justification, 74 Fed. Reg. 63951, 63956 (December 7, 2009) (noting that the non-commercial air

<sup>4</sup> Although the Hutchinson AO is not applicable, Representative Pingree's pre-scheduled fundraiser took up a similar portion of time (about 25%) as the campaign activity of the mayor that the Commission found to be "significant" in the Hutchinson AO.

1 travel prohibition does not apply when the travel would be considered an expenditure by  
2 someone other than the House candidate). However, such third party payments are permissible  
3 under HLOGA only when the non-commercial flight is not on behalf of the House candidate.  
4 *See Id.* In this case, the flights at issue would be considered campaign travel on behalf of  
5 Representative Pingree, and therefore, would not be eligible for third party payment under  
6 HLOGA.

7 Accordingly, there is reason to believe that Representative Rochelle M. Pingree violated  
8 11 C.F.R. § 100.93(c)(2), and Representative Pingree and Pingree for Congress and Anne Rand,  
9 in her official capacity as treasurer, violated 2 U.S.C. § 439a(c)(2), and 11 C.F.R. § 113.5(b).

10 **2. Respondents accepted a corporate (or excessive) contribution**

11 The flights constitute either a prohibited corporate contribution from Magic Carpet or an  
12 excessive contribution from Mr. Sussman. At this time, it is unclear whether Magic Carpet  
13 Enterprises LLC elected tax treatment as a corporation with the Internal Revenue Service.

14 If Magic Carpet elected corporate tax treatment, it made, and Mr. Sussman, as its owner  
15 and principal officer, consented to, a prohibited corporate contribution. Therefore, there is  
16 reason to believe that Representative Pingree, and Pingree for Congress and Anne Rand, in her  
17 official capacity as treasurer, violated 2 U.S.C. § 441b(a) by knowingly accepting a corporate in-  
18 kind contribution.

19 If Magic Carpet is a single member company that does not elect to be treated as a  
20 corporation by the Internal Revenue Service, S. Donald Sussman made an excessive in-kind  
21 contribution to Representative Pingree's campaign. *See* 11 C.F.R. § 110.1(g)(4) (contribution by  
22 single member non-corporate LLC attributed only to single member). As noted above,  
23 Mr. Sussman had already contributed the maximum allowable amount to Representative

**MUR 6394**  
**Factual and Legal Analysis (Pingree)**

- 1 **Pingree's campaign at the time of the flights at issue. Given the value of the flights, under the**
- 2 **alternative theory, there is reason to believe that Representative Pingree, and Pingree for**
- 3 **Congress and Anne Rand, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f) by**
- 4 **knowingly accepting an excessive in-kind contribution.**

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Magic Carpet Enterprises LLC **MUR: 6394**  
4 S. Donald Sussman  
5  
6

7 **I. INTRODUCTION**

8 This matter concerns allegations that Representative Rochelle M. Pingree traveled on  
9 S. Donald Sussman's private jet to and from a September 13, 2010 re-election fundraiser in  
10 violation of the ban on non-commercial campaign-related air travel by House candidates.  
11 Respondents acknowledge that Representative Pingree traveled to the fundraiser on the private  
12 jet, but assert that the travel was primarily personal and did not constitute the type of campaign  
13 expenditure that would violate the Federal Election Campaign Act of 1971, as amended ("the  
14 Act" or "FECA").

15 **II. FACTS**

16 Representative Pingree was a candidate for re-election to Maine's First Congressional  
17 District in 2010. Pingree for Congress is her authorized committee. Representative Pingree has  
18 had a relationship with Sussman since approximately 2007. In late 2010, not long after news of  
19 the flights on the private jet became public, Representative Pingree announced that she and  
20 Sussman had been engaged to be married since after the 2008 election. See  
21 [http://www.onlinesentinel.com/news/allegations-politicallydriven-pingree-says-2010-09-](http://www.onlinesentinel.com/news/allegations-politicallydriven-pingree-says-2010-09-26.html)  
22 [26.html](http://www.onlinesentinel.com/news/allegations-politicallydriven-pingree-says-2010-09-26.html), (last visited April 8, 2011). Sussman gave the maximum \$4,800 (\$2,400 x 2) election  
23 cycle contribution to Representative Pingree's re-election campaign on January 26, 2009.  
24 Sussman, the founder and chairman of Paloma Partners, an investment firm in Greenwich,  
25 Connecticut, wholly owns Magic Carpet Enterprises LLC ("Magic Carpet"), which owns the 19-

1 seat 2007 Dassault Falcon 2000EX private jet on which Representative Pingree flew on the trips  
2 at issue in this matter. *See* Complaint at 2, Joint Response at 1.

3 Pingree for Congress scheduled a re-election fundraiser for Representative Pingree at a  
4 private residence in New York City on September 13, 2010, from 6:30 p.m. to 8:00 p.m. *See*  
5 <http://action.chelliepingree.com/page/event/detail/houseparty/w58>, last visited February 11,  
6 2011). As of August 24, 2010, over 20 individuals, including Representative Pingree's son, had  
7 expressed an intention to attend the fundraiser. *Id.*

8 On the morning of the fundraiser, Monday, September 13, 2010, Representative Pingree  
9 traveled with Sussman from Portland, Maine, to White Plains, New York, on the Magic Carpet  
10 jet. *See* Joint Response at 1. After arriving in White Plains at 1:20 p.m., Representative Pingree  
11 and Sussman drove to New York City, about an hour away by car. Joint Response at 2.  
12 Representative Pingree later attended the fundraiser in Manhattan from approximately 6:30 p.m.  
13 to 8:00 p.m. After the fundraiser ended, Representative Pingree and Sussman drove back to  
14 White Plains and departed on the private jet to Washington, D.C., at 9:22 p.m. *Id.* Based on  
15 publicly available information, the charter rate for a comparably-sized corporate jet for the two  
16 flights appears to be at least \$10,000 per flight, or at least \$20,000 for both flights. *See*  
17 <http://www.avchart.com/users/quotes/default.asp>.

18 Respondents claim that "it is not uncommon" for Representative Pingree and Sussman  
19 (who often has meetings in New York) to fly to New York together for an afternoon or evening,  
20 so that they can have extra time together before Representative Pingree returns to Washington,  
21 D.C. *See* Joint Response at 1. Respondents claim that Mr. Sussman had a personal meeting in  
22 New York on September 13, 2010, and that he wanted Representative Pingree to attend with him.  
23 *Id.* After this meeting (of unspecified duration), Representative Pingree visited with her son and

1 grandson, and later went to the fundraiser between 6:30 p.m. and 8:00 p.m. Respondents argue  
2 that the primary purpose of the trip was personal and Sussman would have invited Representative  
3 Pingree to accompany him irrespective of her candidacy. On this basis, Respondents assert that  
4 the cost of the flights should not be considered a campaign expenditure, and thus not subject to  
5 the ban on using non-commercial aircraft for House candidates engaged in campaign travel.<sup>1</sup> *Id.*  
6 at 2.

7 Respondents point out that the House Committee on Standards of Official Conduct  
8 ("House Ethics Committee") has opined that Representative Pingree may accept unlimited gifts  
9 of transportation, including travel by private aircraft, where the donor is the fiancé of the  
10 recipient. Joint Response at 6. The House Ethics Committee's approval of Representative  
11 Pingree's accepting trips as gifts from Mr. Sussman, however, was based on the fact that the  
12 relevant House gift ban statute, Ethics in Government Act of 1978 (5 U.S.C. app 4 § 109(16)),  
13 specifically includes a fiancé as a relative to whom an exception applies. *See*  
14 <http://ethics.house.gov>, (last visited February 3, 2011). Further, the House Ethics Committee's  
15 opinion does not indicate any awareness that Representative Pingree would conduct campaign  
16 activities during trips.<sup>2</sup> *See* <http://ethics.house.gov>, (last visited February 3, 2011).

17 Respondents do not argue that the House Ethics Committee approval would sanction  
18 Representative Pingree's travel if it constituted a campaign expenditure under the Act. Rather, as  
19 discussed below, Respondents argue that by applying a 2002 Commission Advisory Opinion

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<sup>1</sup> Although the complaint alluded to multiple additional flights Representative Pingree has taken on the Magic Carpet jet, there is no information at this time indicating whether or not she conducted campaign activities on those trips.

<sup>2</sup> The House Ethics Committee generally recommends that Representatives also seek guidance from the Commission regarding non-commercial travel.

1 regarding mixed-purpose travel on commercial flights, which pre-dates the current ban on non-  
2 commercial air travel by House candidates, it is possible to conclude that Representative Pingree  
3 traveled to New York City and attended her campaign fundraiser without ever making a  
4 prohibited campaign expenditure for the non-commercial flight. *See* AO 2002-5 (Hutchinson).

5 **III. ANALYSIS**

6 The Honest Leadership and Open Government Act of 2007 ("HLOGA"), which became  
7 effective on September 14, 2007, amended FECA to prohibit House candidates from making any  
8 expenditure for non-commercial aircraft travel. *See* 2 U.S.C. § 439a(c)(2). The Commission  
9 promulgated implementing regulations that became effective on January 6, 2010. *See*  
10 Explanation and Justification, 74 Fed. Reg. 63951 (December 7, 2009). The regulations provide  
11 that House candidates are prohibited from traveling on non-commercial aircraft on behalf of their  
12 own campaigns, and also from accepting an in-kind contribution in the form of non-commercial  
13 air travel. *See* 11 C.F.R. §§ 100.93(c)(2) and 113.5(b). The HLOGA prohibition on non-  
14 commercial air travel applies to any House candidate who is a "campaign traveler," which  
15 includes, "any candidate traveling in connection with an election for Federal office or any  
16 individual traveling in connection with an election for Federal office on behalf of a candidate or  
17 political committee." 11 C.F.R. §§ 100.93(a)(3)(i)(A).

18 The HLOGA prohibition, however, does not apply to non-commercial aircraft owned or  
19 leased by the candidate or an immediate family member.<sup>3</sup> 2 U.S.C. § 439a(3)(A); 11 C.F.R.  
20 § 113.5(c)(1). For the purposes of this exception, however, an immediate family member is  
21 limited to a father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-

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<sup>3</sup> The prohibition also does not apply to travel on federal or state government-operated aircraft. *See* 2 U.S.C. § 439a(2)(B); 11 C.F.R. §§ 100.93(e) and 113.5(b)(2).



1 in-law. 2 U.S.C. § 439a(3)(B); 11 C.F.R. §§ 100.93(g)(4) and 113.5(c)(3). A “fiancé” is not  
2 included on the statutory list of immediate family members allowed to provide non-commercial  
3 flights to a House candidate. *Id.* Although Respondents note that the House Ethics Committee  
4 Opinion allows Representative Pingree to accept unlimited personal gifts of transportation from  
5 her fiancé, they do not argue that the Pingree-Sussman relationship qualifies for the immediate  
6 family member exception to the HLOGA ban on non-commercial air travel.

7 The Act and Commission regulations prohibit corporations from making any  
8 contribution, and corporate officers from consenting to any corporate contribution, in connection  
9 with a federal election. 2 U.S.C. § 441b and 11 C.F.R. § 114.2(e). “Contribution” includes any  
10 gift, subscription, loan, advance, or deposit of money or anything of value made by any person  
11 for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8).

12 The Act also prohibits any person from making contributions to any candidate or the  
13 candidate’s authorized committee with respect to a federal election which, in the aggregate,  
14 exceed \$2,400 in the 2010 election cycle. 2 U.S.C. § 441a(a)(1)(A).

15 Representative Pingree attended a fundraiser for her re-election campaign in New York  
16 City on September 13, 2010. Because this fundraiser was “in connection with an election for  
17 federal office” and on behalf of her candidacy, Representative Pingree was a covered “campaign  
18 traveler” while traveling to and from New York City. *See* 11 C.F.R. § 100.93(a)(3)(i)(A).

19 In response to the complaint’s allegation that Representative Pingree was a “campaign  
20 traveler,” Respondents argue that there was no “campaign expenditure” for the trip, because  
21 1) Representative Pingree would have been offered the trip on the Magic Carpet jet for personal  
22 business without regard to her status as a candidate, and 2) there was no additional cost beyond  
23 what would have been expended if her trip had been limited to personal business. *See* Joint

1 Response at 2, 5. Respondents point to Advisory Opinion 2002-5 (Hutchinson) to suggest that,  
2 because that candidate was under no obligation to reimburse her employer for the cost of a  
3 permissible commercial flight on a mixed-purpose trip, the Commission should conclude that  
4 there was no covered "campaign expenditure" for the non-commercial flights Representative  
5 Pingree took to and from her fundraiser. See Joint Response at 4-6.

6 In AO 2002-5, a mayor, who also was a candidate for federal office, traveled to  
7 Washington, D.C., for two days of official city business, four days of personal activities, and two  
8 additional days engaged in federal campaign activity. The Commission analyzed the apparent  
9 conflict between its since-modified travel allocation regulations at 11 C.F.R. § 106.3(b)(3)  
10 (which then treated all expenses of a stop in mixed-purpose travel as campaign-related where a  
11 candidate conducted any non-incidental campaign-related activity), and the personal use  
12 regulations at 11 C.F.R. § 113.1(g) (which treated only the incremental expenses of the trip as  
13 campaign-related activities, and thus expenditures under the Act). While the Commission  
14 concluded that the mayor's federal campaign activity in Washington, D.C., was too significant to  
15 be deemed incidental, it gave priority to the provisions of Section 113.1(g) in finding that the  
16 mayor's federal committee was only required to pay for the additional costs related to the  
17 campaign activity. Because the mayor's commercial airfare for the trip to Washington, D.C.,  
18 which had been pre-scheduled for official city business, would have been incurred regardless of  
19 whether there had been campaign activity, the candidate's campaign was not required to  
20 reimburse the city for the cost of the commercial airfare. *Id.* Respondents argue that the  
21 Commission's opinion in AO 2002-5 means that the cost of a candidate's airfare on a mixed-  
22 purpose trip that was paid by a third party irrespective of the traveler's federal candidacy does not

1 constitute a campaign expenditure, and they argue that the same conclusion should apply to the  
2 cost of Representative Pingree's non-commercial air travel. Joint Response at 5-6.

3 The Hutchinson advisory opinion, which dealt with allocation of permissible travel costs  
4 prior to the passage of HLOGA, is inapplicable to this situation. HLOGA prohibits the use of  
5 non-commercial flights by House candidates engaged in campaign travel. Both HLOGA and the  
6 Commission regulations create a bright-line test for any travel in connection with the candidate's  
7 election. Because Representative Pingree attended a campaign fundraising event, there is no  
8 dispute that her trip to New York was in connection with an election. The HLOGA restrictions  
9 on a "campaign traveler" are not altered or negated by a House candidate including some non-  
10 campaign activity on a trip involving campaign activity. Respondents' arguments about the  
11 "primary purpose" of the trip might be relevant to determining whether Sussman could pay for  
12 Representative Pingree's commercial airfare on a trip with him that would have taken place  
13 irrespective of her candidacy, but are irrelevant to determining whether Representative Pingree  
14 could use prohibited non-commercial flights in connection with her re-election campaign.  
15 Because Representative Pingree went to a campaign fundraiser while on the trip to New York  
16 City, she is a covered campaign traveler who may not travel on a non-commercial aircraft.<sup>4</sup>

17 As noted above, while the HLOGA ban contains a limited exception for flights on aircraft  
18 leased or owned by immediate family members, Sussman, as a fiancé, does not qualify as an  
19 immediate family member under HLOGA or the Commission's regulations. Accordingly,  
20 Representative Pingree cannot accept these non-commercial flights. See Explanation and  
21 Justification, 74 Fed. Reg. 63951, 63954 (December 7, 2009).

<sup>4</sup> Although the Hutchinson AO is not applicable, Representative Pingree's pre-scheduled fundraiser took up a similar portion of time (about 25%) as the campaign activity of the mayor that the Commission found to be "significant" in the Hutchinson AO.

1 While Mr. Sussman, as Representative Pingree's fiancé, could pay for non-campaign  
2 flights, Representative Pingree attended a campaign fundraiser. Thus, the prohibition against a  
3 House candidate accepting non-commercial air travel as an in-kind contribution precludes such  
4 payment. The Commission acknowledges that there are circumstances where third party  
5 payments may be permissible under HLOGA. *See* 11 C.F.R. § 100.93(c)(2), Explanation and  
6 Justification, 74 Fed. Reg. 63951, 63956 (December 7, 2009) (noting that the non-commercial air  
7 travel prohibition does not apply when the travel would be considered an expenditure by  
8 someone other than the House candidate). However, such third party payments are permissible  
9 under HLOGA only when the non-commercial flight is not on behalf of the House candidate.  
10 *See Id.* In this case, the flights at issue would be considered campaign travel on behalf of  
11 Representative Pingree, and therefore, would not be eligible for third party payment under  
12 HLOGA.

13 The flights constitute either a prohibited corporate contribution from Magic Carpet or an  
14 excessive contribution from Sussman. If Magic Carpet elected corporate tax treatment with the  
15 Internal Revenue Service, it made, and Sussman, as its owner and principal officer, consented to,  
16 a prohibited corporate contribution. Therefore, there is reason to believe that Magic Carpet  
17 Enterprises LLC violated 2 U.S.C. § 441b(a) by making a corporate in-kind contribution in the  
18 form of non-commercial air travel, and that its sole owner, S. Donald Sussman, violated 2 U.S.C.  
19 § 441b(a) and 11 C.F.R. § 114.2(e) by consenting to such a prohibited contribution.

20 However, if Magic Carpet is a single member company that does not elect to be treated as  
21 a corporation by the Internal Revenue Service, there is reason to believe S. Donald Sussman  
22 violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive in-kind contribution to Representative

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- 1 Pingree's campaign. *See* 11 C.F.R. § 110.1(g)(4) (contribution by single member non-corporate
- 2 LLC attributed only to single member).